



**Billing Code 4310–55**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R1–ES–2015–N001; FXES11120100000F2–156–FF01E00000]**

**Draft Environmental Assessment and Draft Habitat Conservation Plan for the Fender’s Blue Butterfly on Private Lands in Yamhill County, Oregon**

**AGENCY:** Fish and Wildlife Service, Interior

**ACTION:** Notice of availability; request for comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), have received an application from the Yamhill Soil and Water Conservation District (SWCD) for an incidental take permit (permit) under the Endangered Species Act of 1973, as amended (ESA). The permit application includes a draft Habitat Conservation Plan (HCP) addressing private land management activities within upland prairie in Yamhill County, Oregon, that may result in the incidental take of the federally endangered Fender’s blue butterfly. The Service also announces the availability of a draft environmental assessment (EA) addressing the proposed HCP and issuance of a permit that was

prepared in accordance with the National Environmental Policy Act of 1969, as amended (NEPA). We invite comments from all interested parties on the permit application, including the HCP and the EA.

**DATES:** Written comments on the HCP and the EA must be received from interested parties no later than **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the Yamhill SWCD HCP.

- *Internet:* Documents may be viewed on the Internet at <http://www.fws.gov/oregonfwo/ToolsForLandowners/HabitatConservationPlans/>.
- *Email:* OFWOcomment@fws.gov. Include “Yamhill SWCD HCP” in the subject line of the message or comments.
- *U.S. Mail:* State Supervisor, U.S. Fish and Wildlife Service, 2600 SE 98th Ave., Suite 100, Portland, OR 97266.
- *Fax:* 503–231–6195, Attn: Yamhill SWCD HCP.
- *In-Person Viewing or Pickup:* Comments and materials received will be available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 2600 SE 98th Ave., Suite 100, Portland, OR 97266.

**FOR FURTHER INFORMATION CONTACT:** Richard Szlemp, U.S. Fish and

Wildlife Service (see **ADDRESSES**), telephone: 503–231–6179; facsimile: 503–231–6195. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Section 9 of the ESA (16 U.S.C. 1531 *et seq.*) prohibits the take of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Under the ESA, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term “harm,” as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term “harass” is defined in our regulations as to carry out actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

Under specified circumstances, the Service may issue permits that authorize take of federally listed species, provided the take is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively. Section 10(a)(1)(B) of the ESA contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

- (1) The taking will be incidental;
- (2) The applicant will prepare a conservation plan that, to the maximum extent practicable, identifies the steps the applicant will take to minimize and mitigate the impact of such taking;
- (3) The applicant will ensure that adequate funding for the plan will be provided;
- (4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- (5) The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the plan.

### **Proposed Action**

The Service proposes to approve the HCP and to issue a permit, both with a term of 50 years, to the SWCD for incidental take of the federally endangered Fender's blue butterfly (*Icaricia icarioides fenderi*) caused by covered activities, if permit issuance criteria are met. The permit would allow the SWCD to issue certificates of inclusion to private landowners wanting coverage under the HCP for incidental take of the Fender's blue butterfly. Private landowners who wish to be covered under the permit may apply for a certificate of inclusion to the permit after signing a cooperative agreement with the SWCD. This will allow landowners within identified butterfly habitat in Yamhill County to continue to perform otherwise lawful activities that have the potential to impact the Fender's blue butterfly. To compensate for take impacts, the SWCD will work with participating landowners to minimize and mitigate their impacts.

The area to be addressed in the HCP (i.e., the covered lands) consists of privately-

owned lands in Yamhill County, Oregon, totaling approximately 7,831 acres. The covered lands are primarily rural lands supporting a variety of agricultural activities, some of which have the potential to affect Fender's blue butterflies. Activities proposed for coverage (covered activities) under the HCP include forage production, livestock grazing, vineyard establishment, timber establishment, voluntary habitat restoration, and mitigation and monitoring. Potential impacts caused by covered activities are anticipated to occur within upland prairie habitat in areas that are within the butterfly flight distance (1.2 miles) of known Fender's blue butterfly populations.

Under the HCP, the impacts of "take" of the Fender's blue butterfly are being measured by the quantity of the butterfly's host plant, Kincaid's lupine (*Lupinus sulphureus* ssp. *kincaidii*), and nectar resources that are adversely affected. Kincaid's lupine is federally-listed as a threatened species, but there are no take prohibitions for plants on non-Federal lands under the ESA. These impacts are projected based on the acreage of butterfly habitat where the covered activities occur, and the average abundance of Kincaid's lupine and nectar plants in those affected areas. Under the HCP, the total take impact on covered lands is estimated at 0.91 acres over the 50-year permit term.

The HCP includes measures to conserve butterfly habitat, and to avoid and minimize incidental take of the Fender's blue butterfly. Under the HCP, the conservation measures include:

(1) Working with individual landowners and providing technical assistance on means to avoid adverse impacts to the butterfly and its habitat and to implement best management practices for the identified covered activities;

(2) Implementing mitigation measures when impacts to the Fender's blue butterfly and its habitats are unavoidable. Mitigation may be completed by protection of existing butterfly-occupied habitat, habitat enhancement and management that increases the quantity of resources for Fender's blue butterflies beyond pre-existing levels, or a combination of protection and enhancement. Mitigation ratios will be calculated using a product of a site quality multiplier and a base mitigation ratio. The site quality modifier ranges from 0.8 to 1.2, and the base mitigation ratios vary from 1 to 1, to 5 to 1. The HCP assumes an overall average mitigation ratio of 2 to 1 to be applied.

### **National Environmental Policy Act Compliance**

The development of the draft HCP and the proposed issuance of the permit under this plan is a Federal action that triggers the need for compliance with NEPA (42 U.S.C. 4321 *et seq.*). We have prepared a draft EA to analyze the environmental impacts of three alternatives related to the issuance of a permit and implementation of the conservation program under the proposed HCP. The three alternatives include the proposed action, a no-action alternative, and an individual permit alternative to the issuance of certificates of inclusion under the HCP.

The "Proposed Action" alternative is the issuance of a permit to the SWCD and implementation of the HCP.

Under the "No-action" alternative, the proposed HCP would not be implemented and no permit would be issued to the SWCD to provide landowners coverage for incidental take of Fender's blue butterfly resulting from covered activities. The no-action alternative would not give landowners regulatory certainty, and actions that could result

in take of Fender's blue butterfly would be prohibited under section 9 of the ESA.

Under the individual permit alternative, each landowner who may impact the Fender's blue butterfly and its habitat would complete their own HCP, obtain their own permit, and conduct and pay for their own mitigation, which could delay implementation of a covered activity anywhere from one to three years. The SWCD would also be required to obtain take coverage for any habitat restoration, enhancement, and management activities that are likely to impact and cause take of the Fender's blue butterfly.

### **Public Comments**

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on our proposed Federal action. We particularly seek comments on the following: (1) Biological data or other information regarding the Fender's blue butterfly and Kincaid's lupine; (2) additional information concerning the range, distribution, population size, and population trends of the butterfly and the lupine; (3) current or planned activities in the subject area and their possible impacts on these species; (4) the presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in Federal project planning by the National Historic Preservation Act; (5) identification of any other environmental issues that should be considered with regard to the permit action; and (6) information regarding the adequacy

of the HCP pursuant to the requirements for permits at 50 CFR parts 13 and 17.

### **Public Availability of Comments**

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we use in preparing the EA, will be available for public inspection by appointment, during normal business hours, at our Oregon Fish and Wildlife Office (see **ADDRESSES**).

### **Next Steps**

After completion of the EA based on consideration of public comments, we will determine whether our proposed approval of the HCP warrants a finding of no significant impact or whether an environmental impact statement should be prepared pursuant to NEPA. We will evaluate the HCP, as well as any comments we receive, to determine whether implementation of the HCP would meet the criteria for issuance of a permit under section 10(a)(1)(B) of the ESA. We will also evaluate whether the proposed permit action would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will consider the results of this consultation, in combination



with the above findings, in our final analysis to determine whether or not to issue a permit to the SWCD. We will not make the final NEPA and permit decisions until after the end of the 30-day public comment period on this notice, and we will fully consider all comments we receive during the public comment period.

If we determine that the permit issuance requirements are met, the Service will issue a permit to the SWCD. The SWCD would then begin processing requests from landowners interested in certificates on inclusion under the HCP in order to receive coverage for the incidental take of the Fender's blue butterfly under the permit issued to SWCD.

#### **Authority**

We provide this notice in accordance with the requirements of section 10 of the ESA (16 U.S.C. 1531 *et seq.*), and NEPA (42 U.S.C. 4321 *et seq.*) and their implementing regulations (50 CFR 17.22 and 40 CFR 1506.6, respectively).

**Dated:** January 9, 2015.

**Richard Hannan,  
Deputy Regional Director,  
Pacific Region, U. S. Fish and Wildlife Service,  
Portland, Oregon**

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